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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

C 0150025

Outgoing

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January 28, 2009

#### CERTIFIED MAIL

7005 2570 0000 4801 7741

Elliot Finley, Resident Agent  
Co-Op Mining Company  
P.O. Box 1240  
Huntington, Utah 84528

Subject: Findings of Fact, Conclusions, and Order for Violation #10031 Hiawatha Coal Company, Bear Canyon Mine, C/015/0025

Dear Mr. Finley:

On January 27, 2009, an Informal Conference was held to review the assessment for Violation #10031. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the attached document constitutes the findings of fact, conclusions, and order.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty of \$1,870.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed below.

Sincerely,

John R. Baza  
Director

Assessment Conference Officer

dd/vs

cc Mark Reynolds

Enclosures

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Letter Dated 1/28/2009  
Finding Facts and Conclusions  
Final Assessment NOV 10031  
C0150025 Bear Canyon

**0013**

ELLIOT FINLEY  
CO-OP MINING COMPANY  
P O BOX 1240  
HUNTINGTON UTAH 84528

PS Form 3800, June 2002

See Reverse for Instructions

7005 2570 0000 4801 7741

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

---ooOoo---

**IN THE MATTER OF THE  
INFORMAL ASSESSMENT  
CONFERENCE for NOTICE OF  
VIOLATION AND PROPOSED  
ASSESSMENT; VIOLATION No.  
N10031, HIAWATHA COAL  
COMPANY, BEAR CANYON  
MINE, C/015/025, CARBON  
COUNTY, UTAH**

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**FINDINGS of FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

**CAUSE NO. C/015/025**

---ooOoo---

On January 27, 2009, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by R64-401-700 Utah Administrative Code (2008) in response to the written request by Hiawatha Coal Company (Hiawatha) to review the fact of violation and amount assessment for Notice of Violation 10031 (NOV), issued to it on November 5, 2008 for operations at the Bear Canyon Mine, C/015/025, Carbon County, Utah.

**ISSUES**

The Division in its Notice of Violation found that rules R645-301-731.200 and R645-301-731.210 had been violated. These rules require that groundwater monitoring be conducted according to the plan approved under R645-301-731.200 et seq. The Division assessed a fine of \$2,970.00.

**PARTIES**

John Baza, Director Division of Oil, Gas and Mining served as the hearing officer. The hearing was conducted as an informal adjudicative proceeding. James D. Smith, Division Hydrologist and Permit Supervisor, presented the facts and arguments in support of the Notice of Violation, Joe C. Helfrich, Assessment Officer, presented the arguments concerning the determination of the assessment amount. Dana Dean, Division Associate Director, and Ingrid Wieser, Environmental Scientist were in attendance and participated for the Division. Shawn Baker represented Hiawatha Coal Company and presented the position and arguments on its behalf.

No recording or transcript of the conference was made.

## **FINDINGS OF FACT**

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

1. The Request for an informal assessment conference was delivered to the Division on December 23, 2008.
2. Notice of the Informal Assessment Conference was provided as required on January 6, 2009.
3. On July 2, 2008 the first quarter 2008 water monitoring data for the Bear Canyon Mine was officially submitted to the Division.
4. Jim Smith reviewed the data and found that dissolved lead was not sampled at SBC-9A.
5. Because lead is an important parameter for the water at SBC-9A, which feeds to the mine's culinary water supply; and because the mine failed to monitor for lead and other parameters during the fourth quarter of 2007, Jim Smith issued Violation NOV-10016 on November 5, 2008.
6. Mr. Baker did not contest the fact of the violation in the conference, rather the high number of points assessed.
7. Mr. Baker contended that the probability of the lead being out of compliance during the missed sampling period is very low, and thus the seriousness points should not be assessed at the maximum allowable for a hindrance violation.
8. Mr. Baker explained that he has taken steps to avoid future violations of this nature. He hired an assistant to take care of the entire water monitoring process, from collection to data submittal. Chain of custody sheets have been prepared for each month, with all required parameters checked.

## **CONCLUSIONS OF LAW**

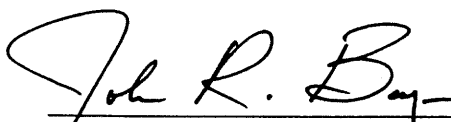
1. The approved water-monitoring plan for the Bear Canyon Mine was not followed for the first quarter of 2008.
2. The fact of the violation should stand.
3. Based on Mr. Baker's testimony, and the actions he is taking to prevent future hindrances, the seriousness points should be lowered from 25 to 15.

## ORDER

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment of \$2,970 is now finalized at \$1,870.00.

SO DETERMINED AND ORDERED this 28<sup>th</sup> day of January 2009

A handwritten signature in black ink, reading "John R. Baza", is written over a horizontal line.

John Baza, Director  
Division of Oil, Gas and Mining

UTAH DIVISION OF OIL, GAS AND MINING  
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: Hiawatha Coal Company  
PERMIT: C/015/025  
VIOLATION: 10031

ASSESSMENT CONFERENCE OFFICER: John R. Baza

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>2</u>	<u>2</u>
(2) Seriousness	<u>25</u>	<u>15</u>
(3) Negligence	<u>20</u>	<u>20</u>
(4) Good Faith	<u>0</u>	<u>0</u>
Total Points	<u>47</u>	<u>37</u>

TOTAL ASSESSED FINE \$1,870.00

NARRATIVE: The Conference Officer reduced the negligence points by 10 in anticipation of improvements to the efficiency of the mine's water monitoring. Mr. Baker explained that the company has now hired a person who is completely responsible for the water monitoring from beginning to end, and that she has pre-prepared chain of custody sheets with all applicable parameters marked. He does not anticipate having a similar problem from this date on. An NOV is likely to be issued for missing the same parameters during the 3<sup>rd</sup> quarter of 2008, Mr. Baker made his changes subsequent to that.